IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5246 of 2004

For Approval and Signature:

THE HON'BLE MR.JUSTICE A.M.KAPADIA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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JAINUDDIN TAHERALI - Petitioner(s)

Versus

ASGARALI FAKRIDIN. &3 - Respondent(s)

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Appearance :

MR PJ KANABARfor Petitioner No(s).: 1 - 1.

None for Respondent No(s).: 1.

RULE SERVED for Respondent No(s).: 1 - 1.

MR MB PARIKH for Respondent No(s).: 1 - 1, 2,3.

RULE NOT RECD BACK for Respondent No(s).: 1.

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CORAM :THE HON'BLE MR.JUSTICE A.M.KAPADIA

Date : 28/06/2005

ORAL JUDGMENT

1.By filing instant petition under Article 226 and 227 of the Constitution of India, petitioners seek to challenge the judgement and order dated 11.3.2004 recorded in Civil Misc. Appeal No. 15 of 2000 by the learned Joint District Judge, 2nd Fast Track Court, Amreli, by which the appeal filed by the petitioners came to be dismissed and thereby order dated 7.3.2000 recorded below application exh. 69 in Regular Civil Suit No. 109 of 1995 by the learned 1st Joint Civil Judge (JD), Amreli, rejecting the application filed under Order 22 Rule 4 of the Code of Civil Procedure, praying to set aside the order of abatement, abating Regular Civil Suit No. 109 of 1995, came to be affirmed.

2.Having heard Mr. P.J.Kanabar, learned advocate of the petitioners and Mr. M.B.Parikh, learned advocate of the respondents and on perusal of both the impugned orders, according to this Court petitioner has made out sufficient cause for not filing the application, praying to set aside the abatement in time and the delay has been properly explained, therefore, according to this Court, learned Civil Judge (JD), Amrely ought to have allowed the application filed at exh.69 in Regular Civil Suit No. 109 of 1995. The learned Joint District Judge has also committed grave error and ought to have condoned the delay. In fact in operative portion of the order the learned District Judge has recorded the finding that the petitioner has sufficiently explained the delay caused in filing the application, seeking setting aside of the abatement. However, he has held that the appeal is not maintainable under Order 43 Rule 1(k) of the Code.

3.In aforesaid view of the matter both the orders; one which is passed by the learned Civil Judge, Amreli and another which is confirmed by the learned Joint District Judge, Amreli, deserves to be quashed and set aside by allowing this petition.

4.For the foregoing reasons, petition succeeds and accordingly it is allowed. Order dated 11.3.2004 rendered in Civil Misc. Appeal No. 15 of 2000 by the learned Joint District Judge, Fast Track Court, Amreli and also order dated 7.3.2000 recorded below application exh. 69 in Regular Civil Suit No. 109 of 1995 are hereby quashed and set aside, result of which is that application exh. 69 is allowed. The order abating the Regular Civil Suit No. 109 of 1995 is quashed and set aside. Petitioner is permitted to implead him as plaintiff in Regular

Civil Suit No. 109 of 1995. The trial Court to proceed with the hearing of the Suit as expeditiously as possible.

5.Rule is made absolute to the aforesaid extent.

(A.M.Kapadia,J)

Jayanti*